



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 18, 2019

Mr. Juan E. Gonzalez  
Counsel for the City of Weslaco  
Law Office of Juan E. Gonzalez  
3110 East Business Highway 83  
Weslaco, Texas 78596

OR2019-32411

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 797184.

The City of Weslaco (the "city"), which you represent, received a request for the personnel file of a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 143.089 of the Local Government Code. The city states it is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the maintenance of two different types of personnel files for each police officer or firefighter employed by a civil service city: one that must be maintained as part of the employee's civil service file and another that the police or fire department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). In cases in which a police or fire department investigates a police officer's or fire fighter's misconduct and takes disciplinary action against an officer or fire fighter, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's or fire fighter's civil service file maintained under

section 143.089(a).<sup>1</sup> *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the police or fire department because of its investigation into a police officer’s or fire fighter’s misconduct, and the department at issue must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under the Act. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department’s or fire fighter’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

The city states the submitted information is contained in its internal files pursuant to section 143.089(g). However, we note the submitted information also includes periodic evaluations, which are subject to section 143.089(a). These documents, which we have marked, must be placed in the officer’s civil service file under section 143.089(a). In this instance, the request was received by the city, which has access to the files maintained under both sections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Thus, with the exception of the periodic evaluations we have marked, the submitted information is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.117(a)(16) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a firefighter or volunteer firefighter or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, regardless of whether the current or former employee complies with section 552.024 or 552.1175. Act of May 27, 2019, 86th Leg., R.S., H.B. 2446, § 4 (to be codified at Gov’t Code § 552.117(a)(16)). Accordingly, the city must withhold the information we have marked under section 552.117(a)(16) of the Government Code.

In summary, with the exception of the periodic evaluations we have marked, the city must withhold the submitted information under section 552.101 of the Government in conjunction with section 143.089(g) of the Local Government Code. In releasing the period evaluations, the city must withhold the information we have marked under section 552.117(a)(16) of the Government Code. The city must release the remaining information.

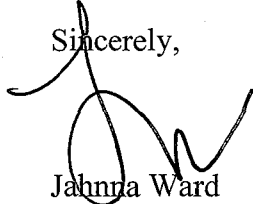
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup> Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jahnna Ward', with a stylized flourish at the end.

Jahnna Ward  
Assistant Attorney General  
Open Records Division

JW/jxd

Ref: ID# 797184

Enc. Submitted documents

c: Requestor  
(w/o enclosures)